1950

File No. O. Tramways/ Legal Department-50

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Subject.

Opinions under the Indian Tramways Act, 1886

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Legal Department File No. O. Tramways / 50

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It appears that with the sanction of the Commissioner, Northern Division, the Ahmedabad Municipality had leased a portion of the street land measuring 70 square yards and 6 square feet to the Ambica Mills Ltd. for a period of 7 years from 10th May 1932 for laying rails connecting the Mill premises with the Railway Siding. The lease was renewed and the period of the extended lease expired on 9th May 1946. On the expiry of the lease the Municipality proposed a fresh renewal for a further period of 7 years and submitted the proposal to the Commissioner, Northern Division. The Commissioner, however, refused sanction on the ground that the laying of trolley lines in a public street would be a nuisance and as such illegal and further directed the removal of the rails as they were an encroachment on street land. The Mills then approached Government and Government in the Health and Local Government Department decided to turn down the application in view of the Advocate General's opinion No. 20 of 1943, wherein he opined that laying of trolley lines was a nuisance and was illegal. The papers were, however, shown to the R.L.A., who pointed out that the difficulty expressed by the Advocate General in that opinion no longer survived as the Tramways Act was amended by Bombay Act No. L of 1948 and the Department was requested to reconsider the position. The case has been reconsidered by H. & L.G.D. The points raised for the R.L.A.'s consideration are :-

(1) The rails are railway lines and the Tramways Act may not apply to them; and

(2) If the R.L.A. holds that the Act applies, still strict compliance with the provisions of sections 4, 5 and 7 would not be possible in the present case as the rails are already in existence.

"Tramway" as defined in section 3(5) of the Indian Tramways Act, 1886, means a tramway having one, two or more rails and includes any part of a tramway or any siding, turnout, connection, line or track belonging to a tramway. The term "railway" as defined in section 3(4) of the Indian Railways Act, 1890, means a railway or any portion of a railway, for the public carriage of passengers, animals or goods and includes etc. "Railway" as defined in section 311(2) of the Government of India Act which corresponds to Article 366(20) of the Constitution of India, includes a tramway not wholly within a municipal area. The tramway constructed in the present case is wholly within the municipal area. It is not, therefore, a railway within the meaning of section 311(2) of the Government of India Act. It is not open to the public and being exclusively for private use it would not be a railway within the meaning of section 3(4) of the Indian Railways Act. The fact that the trolley lines in question are connected to the railway would make no difference. Consequently, the rails laid down in the present case would be tramways to which the Tramways Act would apply.

It is ture that the rails are already in existence in the present case and strict compliance with the provisions of sections 4, 5 and 7 of the Tramways Act may not be possible. This difficulty can be resolved by resorting to section 49, which provides.

> Notwithstanding anything contained in this Act, the Provincial Government may by a notification in the Official Gazette exempt any tramway which is not, or when completed will not be a federal railway as defined in sub-section (2) of section 311 of the Government of India Act, 1935, and which is constructed and maintained for private use, from the operation of any of the provisions of this Act or declare that any provisions of this Act shall apply to such tramway with such modifications as may be specified in the notification."

It would, therefore, be competent for Government to issue a notification modifying the provisions of the

Indian Tramways Act in respect of these rails if any difficulty is felt in giving effect to all the provisions of the Act due to the fact that the rails are already in existence.

In the linked case the question raised in almost similar, The Municipality seems to be willing to grant a lease and the Commissioner has taken objection on the ground that laying of trolley lines would be xxx nuisance and as suc illegal. This legal difficulty no longer survives. The procedure to be followed in the other case may be followed in this case also.

Sd. P.M.Lad.
14-1

Remembrancer of Legal Affairs.

U.R. to H. & L.G.D. No. 642 dated the 14th January 1950.

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The Government of India Act, 1935, has been repealed with effect from 26th January 1950 (see Article 395 of the Constitution) and hence reference to section 311(2) of that Act is not relevant. Under Article 246(1) read with entry No. 22 in List I in the Seventh Schedule to the Constitution, "railway" is a Central Subject. "Railway" as defined in Article 366(20) of the Constitution does not include --

(a) a tramway wholly within a municipal area or

(b) any other line of communication wholly situate in one State and declared by Parliament by law not to be a railway.

The proposed tramway line from Unjha to Unava, a distance of about 3½ miles, would be a "railway" as defined above unless it is covered by clause (a) or (b), and in that case it would not be competent to the State Government to take any executive or legislative action in relation to such railway.

Sd. P.M.Lad
15-5

Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 6757, dated the 18th May 1950.

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